COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No.560 of 2001

1. The Commissioner of Income Tax, Dehradun.
2. Asstt. Commissioner of Income Tax, Dehradun

... Appellants

Versus

Hughes Services (FE) Pvt. Ltd.,
As agent of Mr. Marison B.W.
C/o G.C. Nagalia (Advocate)
20-A New Road, Dehradun

... Respondent

Dated: December 06, 2005

Mr. S.K. Posti, Advocate for the appellants.
Mr. V.K. Bisht, Advocate for the respondent.

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

This appeal is against the order dated 20.03.2001, passed by the Income Tax Appellate Tribunal, (Delhi Bench 'SMC-I' New Delhi) in ITA No.1696(Del) of 1994. The dispute relates to the Assessment Year 1990-91.

2. The substantial questions of law raised in the appeal are as follows:

> "Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally correct to hold that the salary paid to the assessee for the off period outside India was not chargeable to Indian Income-Tax Act in terms of Section 9(1)(ii) of the I.T. Act, 1961, whereas the Ld. ITAT has itself held, vide order dated 25.03.1992 in ITA No.5649/D/92, dated 28.07.1999 in ITA No.1079/D/91, dated 24.01.2000 in ITA No.411/D/93 and dated 15.05.2000 in ITA No.1648/D/94 that off period salary is taxable in India

and vide order dated 18.11.1996 in R.A. No.443 to 511/D/96 has referred question of law on this issue for esteemed opinion of this Court."

"Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally correct in holding the substance allowance comprising free boarding facility provided by the employer on board the rig in high seas cannot be construed to be perquisite?"

3. The first question has been decided by the Hon'ble Apex Court in Civil Appeal Nos.351-355 of 2005 ***"Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) SC 639"***. In view of the aforesaid decision of the Hon'ble Apex Court, this question is answered in favour of the assessee.

4. So far as the second question is concerned, a Division Bench of this Court in the case of *Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd. and connected cases reported in (2003) 264 ITR 320,* has held that the free boarding facility provided by the employer on the rig was not a perquisite under Section 17 (2)(iii) and that its value cannot be added to the income of the assessee.

5. In view of the above, we dismiss the appeal. Both the questions are answered against the appellants and in favour of the assessee.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Rajeev Dang